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9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 OAKLAND DIVISION

13 UNITED STATES OF AMERICA, )  
14 Plaintiff, ) Case No. CR 14 296 JST  
15 v. ) [PROPOSED] ORDER TO PRODUCE  
16 EDGARDO DUARTE, ) REPRESENTATIVE SAMPLE FOR  
17 Defendant. ) QUALITATIVE AND QUANTITATIVE  
RETESTING BY DEFENSE  
18 \_\_\_\_\_)

19 Before the Court is a stipulation of the parties, filed January 11, 2017, asking this Court to issue  
20 an order requiring the Government to produce, for qualitative and quantitative retesting by a defense  
21 expert, a representative sample from a controlled substance exhibit currently in the possession of the  
22 Drug Enforcement Administration.

23 For good cause shown, and in the interests of justice, the Court issues the following orders.

24 IT IS HEREBY ORDERED that the Government shall extract samples from the following  
25 exhibit, sufficient in its discretion to perform the qualitative and quantitative analysis:

<u>Exhibit</u>	<u>Laboratory Number</u>	<u>LIMS Case Number</u>
3	7180698	2013-SFL7-04484

1 IT IS FURTHER ORDERED that the Government shall deliver, in a manner it deems consistent  
2 with the type and quantity of controlled substance at issue, and considering the expert's proximity to the  
3 originating Drug Enforcement Administration (DEA) laboratory, a representative sample of the exhibits  
4 identified above to the defense expert, who has been specifically identified as **Jennifer Piper** at the  
5 laboratory that has been specifically identified as **Forensic Analytical Sciences, Inc.**, which is  
6 physically located at 3777 Depot Road, Suite # 403, Hayward, CA 94545 and with a mailing address of  
7 3777 Depot Road, Suite # 403, Hayward, CA 94545. The expert shall possess and present in advance,  
8 as a prerequisite to the delivery of the exhibits, a current and valid DEA registration (number  
9 RF1093778) sufficient to perform the qualitative and quantitative analyses of the schedule of controlled  
10 substance at issue, in accord and in full compliance with the applicable DEA registration procedures,  
11 found at 21 C.F.R. § 1301.11 *et seq.*; and

12 IT IS FURTHER ORDERED that, upon delivery of the exhibits to the defense expert, the expert  
13 shall sign and return by Registered Mail, Return Receipt Requested, all accompanying forms (including  
14 Form DEA-12, "Receipt For Cash Or Other Items") indicating receipt of the sample. The defense expert  
15 shall conduct the identification and quantitative analysis (calculated as the hydrochloride salt form)  
16 ordered herein, and shall provide the Government with a Declaration Under Penalty of Perjury pursuant  
17 to 28 U.S.C. § 1746. The Declaration will state the quantity of each exhibit consumed during analysis  
18 (if any) as well as the weight of each exhibit both received from and returned to the Government. The  
19 Declaration shall be delivered to the Government immediately upon completion of the analyses ordered  
20 herein; and

21 IT IS FURTHER ORDERED that the defendant shall provide the Government with a copy of the  
22 results or reports of the analyses under this Order; and

23 IT IS FURTHER ORDERED that:

- 24 (1) The defense shall coordinate with the Government a convenient date and time for the  
25 analyses ordered herein, which date shall be within thirty (30) days of the date of this Order;  
26 (2) The defense expert is responsible for safeguarding the exhibit(s)/sample(s), preserving the  
27 chain of custody in a manner to faithfully protect its integrity;

- (3) The defense expert is responsible for repackaging each internal sample/exhibit package into a heat-sealed evidentiary envelope, which heat-sealed container shall be placed into a separate heat-sealed envelope, which shall be secured in such a manner that tampering will be readily observable;
- (4) Upon completion of any other reanalysis, the defense expert shall return any residual substance and its original packaging to the law enforcement officer or, where applicable, to the originating DEA laboratory by secure method, not to include regular mail. The method can be secured delivery services (i.e., barcode tracking systems) offered by the United States Postal Service (such as registered mail) or by a commercial carrier;
- (5) All reanalysis must be completed within ten (10) calendar days from the date of receipt of the sample(s)/exhibit(s). Return of any residual substance and its original packaging must occur within five (5) calendar days following completion of the reanalysis;
- (6) Any failure to follow the aforementioned procedures will render the reanalysis results scientifically unreliable, as those terms are used in the Federal Rules of Evidence or its state equivalent;
- (7) Any failure by the defense to maintain the proper chain of custody will not render DEA Laboratory No. 7180698, LIMS Case No. 2013-SFL7-04484, Exhibit Number 3 inadmissible for this reason at either the guilt or sentencing phases of these proceedings.

**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

Dated: January 12, 2017

  
THE HONORABLE JON S. TIGAR  
UNITED STATES DISTRICT JUDGE